

**REMARKS**

Claims 17 and 18 are added, claim 11 is canceled without prejudice and therefore claims 9, 10 and 12 to 18 are now pending and being considered.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to page three (3) of the Office Action, Applicants thank the Examiner for indicating that claims 11 to 16 include allowable subject. While the anticipation rejections may not be agreed with, to facilitate matters, claim 9 has been rewritten to include the features of claim 11, which has been canceled without prejudice. Accordingly, claim 9 is allowable, as is its dependent claim 10. Claims 12 and 15 have been rewritten as independent claims to include the features of claim 9 as originally presented. Accordingly, claim 12 is allowable as are its dependent claims 13 and 14, and claim 15 is allowable as is its dependent claim 16. Approval and entry are respectfully requested. It is therefore respectfully requested that the claim objections be withdrawn.

With respect to page two (2) of the Office Action, claims 9 and 10 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent Publication No. 20010014846A1 ("Sawamoto").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law

make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the anticipation rejections may not be agreed with, to facilitate matters, claim 9 has been rewritten to include the features of claim 11, which has been canceled without prejudice. Accordingly, claim 9 is allowable, as is its dependent claim 10. Approval and entry are respectfully requested. It is therefore respectfully requested that the anticipation rejections be withdrawn.

Accordingly, claims 9, 10 and 12 to 16 are allowable.

New claims 17 and 18 do not add any new matter and are supported in the specification. New claim 17 depends from claim allowable claim 15 and is therefore allowable for the same reasons as claim 15. New claim 18 depends from claim allowable claim 12 and is therefore allowable for the same reasons as claim 12.

It is therefore respectfully submitted that claims 9, 10 and 12 to 18 are allowable.

#### Conclusion

It is therefore respectfully submitted that all of pending and considered claims 9, 10 and 12 to 18 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

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Respectfully submitted,

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